

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 13,294

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Appeal of)

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INTRODUCTION

The petitioner has filed an administrative grievance against the Office of Child Support Enforcement (OCSE) concerning several aspects of that office's handling of her child support collection claim. The issues are whether OCSE has met its legal obligations to the petitioner in the collection of her child support.

FINDINGS OF FACT

1. The petitioner, who was divorced from her husband in 1985, obtained an order of support from the Family Court which was modified on at least two occasions, the most recent of which, prior to the filing of this grievance, was on November 6, 1989. That order required the petitioner's ex-husband to pay \$100 per week for the support of his two children and establishing an arrearage of \$5,850. The ex-husband did not make regular payments pursuant to that order and has made no payments whatsoever during the last four years. In 1992, the petitioner filed a lien with the town clerk on property partially owned by her ex-husband (his father being the other owner) for the arrearage amount. She believes his interest in the land is worth about \$20,000. At that time he was receiving workers' compensation benefits. She believes at present that he is self-employed and receives money "under the table."
2. In January of 1993, the petitioner became an ANFC recipient. She receives approximately \$550 per month in benefits for herself and her two children. In consideration of the receipt of ANFC, the petitioner assigned her support rights and those of her children to DSW. She signed an agreement saying that she understood that any unpaid support collected by DSW would first be used to reimburse DSW for her grants before any excess was paid to her.
3. In November of 1993, OCSE, acting on behalf of the Department of Social Welfare which had an assignment of the support rights, petitioned the Family Court to enforce the petitioner's child support order. However, service on the ex-husband proved to be difficult and several unsuccessful attempts were

made before OCSE asked for service through publication. OCSE was told to get an affidavit from the sheriff before this could be accomplished. Nothing happened from that time, May of 1994, until the Department was contacted by the petitioner in October of 1994. No explanation was offered for this delay.

4. In the Fall of 1994, the petitioner learned that a motion had been made to partition the property on which she had the arrearage lien. She notified the Department of the hearing on October 12, 1994, but no one from the Department attended the hearing. OCSE declined to attend the hearing because it felt it did not yet have a judgment for the arrears needed to put a lien in place. There was also a judgment made that the petitioner could handle it herself. The petitioner did attend that hearing but it did not result in a partition of the land at that time. However, at the hearing the petitioner's ex-father-in-law's attorney remarked to her that she did not have a valid lien which opinion she passed on to OCSE. In December of 1994, the petitioner filed a new lien on the property herself.

5. The petitioner asked for an administrative review in November of 1994, because she was dissatisfied with OCSE's handling of her child support case. An administrative review was held and a report was issued which set forth many of the above facts. The petitioner was also informed that phone calls had been made as a result of the petitioner's requests and that the sheriff's department felt they could now personally serve the ex-husband. It was expected that a court hearing would be set soon. The review stated that the case seemed to "hit one stone wall after another" and that OCSE had "lost control of the time element of this case once the case was sent to the court for service and hearing dates." The review also referred to the workloads of OCSE employees and the demanding situations they face day in and day out.

5. Either late in 1994, or early in 1995, the sheriff was able to personally serve the ex-husband and he appeared at a hearing along with OCSE and the petitioner on February 10, 1995. The petitioner received a judgment for arrears in the amount of \$28,449 and the petitioner's ex-husband was ordered to diligently seek work and to report monthly to OCSE. He was ordered to pay \$100 per week in current support and \$50 per week on the arrears. The ex-husband was found in contempt of court for willful nonpayment and was warned that he would be incarcerated if he failed to comply with the order of contempt.

6. At hearing, the OCSE attorney indicated that he would record the judgement obtained by the court as a lien on the property. The petitioner is not satisfied with the outcome of that hearing which she characterized as "the same useless slap on the hand." She criticized the court's failure to immediately incarcerate her ex-husband or to force him to take out a mortgage on the property to pay the back debt.

7. The petitioner's general complaint against the OCSE is that "the actions they take are not vigorous and I am only running up more of a debt by needing to receive ANFC due to the lack of their effective action." Specifically, the petitioner claims that OCSE should have attached her husband's workers' compensation benefits (which have since ceased) in 1993, should have joined with her in securing and enforcing the lien on the arrearage and should have obtained an earlier court hearing date at which they insisted upon incarceration for contempt. She also maintains that had the Department enforced the child support obligation earlier, she would have received a \$50 passalong each month and by this time (some two years later) she would have received some \$1,200 more from DSW than she has received. She asked to have that amount reimbursed to her. She also wants a declaration with regard to the proceeds of any money that might be realized from enforcement of the lien. She does not believe it should go to DSW to pay off the ANFC debt but rather to her to pay child support arrearages owed to her.

ORDER

The OCSE is ordered to immediately file a lien on property owned by the petitioner's ex-husband to enforce her recent judgment for arrearages and to actively partake in any action which may be brought to force a sale of that property. OCSE is also ordered to take further timely enforcement actions should the petitioner's ex-husband fail to follow the enforcement order made in February of 1995. The petitioner's request to receive retroactive "passalong" payments is denied.

REASONS

Under the statutes of the State of Vermont, when a person accepts ANFC payments, she assigns her rights to collect child support to the Department of Social Welfare who then appoints the Office of Child Support Enforcement to establish and enforce those rights. See 33 V.S.A. §§ 3902 and 4106. By statute, "[p]ersons who have assigned their support rights to the state shall be informed of actions that will be taken on their behalf and shall be entitled to information concerning the progress or results of any such action." 33 V.S.A. § 4106(d).

By virtue of its participation in the child support enforcement program established by federal law (Title IV-D of the Social Security Act, 42 U.S.C. § 651 *et seq.*) and administered by a subsection of the Department of Health and Human Services, the Vermont OCSE is required to adhere to regulations promulgated by the federal government in its pursuit of child support collections. 45 C.F.R. § 301.10. Among those regulations are mandatory time frames for actions to enforce support obligations and requirements that liens be established for overdue support:

For all cases referred to the IV-D agency . . . in which the obligation to support and the amount of the obligation have been established, the IV-D agency must maintain and use an effective system for:

- (a) Monitoring compliance with the support obligation;
- (b) Identifying on the date the parent fails to make payments in an amount equal to the support payable for one month, or on an earlier date in accordance with State law, those cases in which there is a failure to comply with the support obligation; and
- (c) Enforcing the obligation by:
 - (1) Initiating income withholding, in accordance with § 303.100;
 - (2) Taking any appropriate enforcement action (except income withholding and Federal and State income tax refund offset) unless service of process is necessary, within nor more than 30 calendar days of identifying a delinquency or other support-related non-compliance with the order or the location of the absent parent, whichever occurs later. If service of process is necessary prior to taking an enforcement action, service must be completed (or unsuccessful attempts to serve process must be documented in accordance with the State's guidelines defining diligent efforts under § 303.3(c), and enforcement action taken if process is served, within no later than 60 calendar days of identifying a delinquency or other support related non-compliance with the order, or the location of the absent parent, whichever occurs later;

...

(4) In cases in which enforcement attempts have been unsuccessful, at the time an attempt to enforce fails, examining the reason the enforcement attempt failed and determining when it would be appropriate to take an enforcement in the future, and taking an enforcement action in accordance with the requirements of this section at that time.

45 C.F.R. § 303.6

(a) The State shall have in effect and use procedures which require that a lien will be imposed against the real and personal property of an absent parent who is owed overdue support and who resides or owns property in the State.

45 C.F.R. § 303.103

In this matter, OCSE either knew or should have known in January of 1993, when the petitioner became an ANFC recipient, that her ex-husband was not paying child support. The regulations cited above require the Department to commence some action to enforce support within sixty days of identifying the delinquency. That clearly was not done in this matter. It took almost ten months for OCSE to file a motion and to attempt service. When service could not be made, OCSE inexplicably failed to follow through with state procedures for service by publication for some five months. In fact, the case languished until the petitioner filed a grievance. The regulations do not set time frames for completing cases but clearly contemplate that enforcement actions should be swiftly maintained. The regulations do recognize that some enforcement actions are unsuccessful but in that situation require analysis, documentation and calendared review of the matter, not mere delay or abandonment of the action. It appears that OCSE did abandon the case for several months because they could offer no explanation for what they termed a "loss of control" other than their own heavy caseloads.

The above cited regulations also clearly require OCSE to place liens on property to collect arrearages in accordance with state law. The State of Vermont has a statute which automatically defines arrearage judgments in excess of one month's support as an "arrearage judgment lien" and sets up an easy process for recording such liens and for including as part of the lien arrearages which accrue after the time the lien is filed. 15 V.S.A. § 791. When the petitioner went on ANFC she already had a judgment for arrearages which could have been subject to a lien. She attempted to put a lien on the property herself. However, she was unsuccessful in her attempts to involve OCSE in enforcement of the lien when the property was in a partition action.

OCSE has offered some contradictory justifications for its lack of involvement in this lien situation, one being that they first needed to get a judgment for arrearages, another being that the petitioner had already taken care of that lien herself. Clearly, OCSE knew or must have known that the petitioner already had a judgment for arrearages, making the first contention incomprehensible. The second contention might have excused their filing a new lien if the petitioner indeed had filed a valid lien protecting the prior arrearage. However, there is no evidence that OCSE ever verified that a valid lien had been filed. Finally, OCSE's lack of interest in enforcing the lien at hearing shows a remarkable callousness not only with regard to collecting back support owed to the petitioner but also in collecting back support owed to the Department of Social Welfare. It cannot be found that these actions comport with the regulatory requirement of the establishment (and presumably enforcement) of liens to collect

arrearages.

To be sure, OCSE workers have heavy caseloads and many demands on their time which might cause delays in collection cases. It is equally true that persons who avoid service and have unreported self-employment income present particular frustrations for those attempting to collect child support. However, OCSE offered no argument that they were exempt from the requirements in the Title IV-D program. There was no evidence offered here that good faith efforts were made to meet the deadlines or even that there was "substantial compliance." From the record it appears that little happened in this matter until the petitioner asked for administrative reviews and hearings. By that time, the petitioner had been on ANFC for over two years. It must be concluded that OCSE did not carry out the letter or the spirit of the regulations with regard to enforcing the petitioner's child support.

Given that conclusion, it must be determined what remedy can be afforded to the petitioner. Under 3 V.S.A. § 3091(d), the Board "may affirm, modify or reverse decisions of the agency; it may determine whether an alleged delay was justified; and it may make orders consistent with this title requiring the agency to provide appropriate relief including retroactive and prospective benefits." Clearly collection of child support owed to the petitioner was unjustifiably delayed. Since the appeal was filed, OCSE has moved the case into Court and an enforcement order has been issued, so it is now unnecessary for the Board to order that such an action be taken. There is no evidence, however, that OCSE has taken any action to record the arrearage lien. It is appropriate, therefore, to order OCSE to take such an action and also to become involved in any proceedings which affect the enforcement of the lien. It is also appropriate to order OCSE to take timely further action should the ex-husband fail to follow the mandates of the enforcement order issued in February of 1995.

The petitioner has asked that she be awarded the \$50 monthly passalong she would have received if the Department had made timely and successful efforts to collect her child support. However, such an award cannot be made because the \$50 amount is not a "benefit" paid by OCSE but rather a payment made out of collections received:

(b) The amounts collected as support by the IV-D [OCSE] agency pursuant to the State plan for children and the parents of such children who are current recipients of aid under the State's title IV-A [ANFC] plan and for whom an assignment under § 232.11 of this title is effective shall be distributed as follows:

(1) Of such amounts as are collected periodically which represent monthly support payments, the first \$50 of any payments for a month received in that month, and the first \$50 of payments for each prior month received in that month which were made by the absent parent in the month when due, shall be paid to the family.

45 C.F.R. § 302.51

No amounts were collected from the petitioner's ex-husband from which such a passalong could be made. The fact that such a lack of collections may have been the fault of OCSE does not change the requirement of the collection or create an obligation on the part of OCSE to confer a benefit. It is possible that the petitioner may have a claim for civil damages under some legal theory based upon her loss, but the Board does not have the power to award her civil damages. Scherer v. DSW, Vermont Supreme Court, Docket No. 94-206, March 24, 1995.

The final relief requested by the petitioner is a declaration of her rights if the lien were enforced to pay

arrearages. Because there are no facts before the Board which currently implicate the operation of an arrearage payment rule, this question is technically not ripe. However, the petitioner should be advised generally that amounts in excess of the monthly payment which are collected from non-custodial parents (for example, through foreclosure of a lien) for families on ANFC are first used to repay current monthly ANFC payments; are then applied to reimburse the State for past assistance payments which are still unreimbursed; and any excess amounts are then paid over to the family. See 45 C.F.R. § 302.51. The petitioner is encouraged to consult with her own attorney and to read the entire text of the above regulation for more information about how this might apply to her situation.

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